

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4159 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HINDUSTAN OIL CAKE THRO' POH CHANDULAL RAVAJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

NANAVATY ADVOCATES for Petitioner
MR MA BUKHARI ASSTT. GOVERNMENT PLEADER
for Respondent No. 1

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 07/08/97

ORAL JUDGEMENT

Rule. Mr. Bukhari, AGP, waives the service of Rule on behalf of the respondent-State.

2. Heard Mr.N.D. Nanavati Senior Advocate for the petitioner and Mr. Bukhari, AGP for the respondent. The case of the petitioner is that one Dhirajbhai Chhaganlal Patel was a partner of the petitioner firm and he brought

in the land on which the petitioner's factory is situated as his contribution to its capital. He had also applied for exemption of the concerned land for its use for industrial purposes. The application was made on 16th November, 1977, but has come to be decided on 1st February, 1995. In the meanwhile, this Mr. Patel had withdrawn from the petitioner firm and amongst others, this has been used as a ground to reject that application. The order also refers to the judgment of the Supreme Court in the case of S.Vasudeva Vs. State of Karnataka, (1993) 3 SCC 467 and states that a change as required cannot be granted under Sec.20 of the Urban Land (Ceiling and Regulation) Act, 1976. The petitioner firm has applied for review of this order by immediately representing to the respondents, by their representation dt. 8th March, 1995. The same remains to be decided yet.

3. Mr. Nanavati points out and rightly so that the judgment in the case of S.Vasudeva (supra) no longer holds good and has been specifically over-ruled by the Supreme Court in the case of T.R.Thandur Vs. Union of India, reported in (1996) 3 SCC 690. He submits that in view of this development and keeping the latest legal position in mind, the respondent should decide the representation made by the petitioner against the order dt. 1st February, 1995. Mr. Bukhari has no objection, if this course is adopted. Accordingly, it is directed as follows:-

That the representation made by the petitioner on 8th March, 1995 will be considered by the respondent in the light of the latest legal position. If the petitioner is desirous of placing any additional materials on record, he is at liberty to do so within two weeks from today and the representation will be considered and decided in accordance with law as expeditiously as possible and preferably within twelve weeks from the receipt of the order. In the meanwhile, the order dt. 1st February, 1995 will remain in abeyance and no further steps in pursuance thereof will be taken by the respondents. One of the factors which the petitioner would like to place before the respondent is that pending the clearance under Sec.20, this Mr. Patel was given permission to proceed with the construction to start Oil Cake Industries, by the officer concerned of the Revenue Department vide his order dt. 29th November, 1977. The petitioners are at liberty to place this factor before the respondents and the same will be considered on its merits. With the above direction, the petition is disposed of accordingly. Direct Service

permitted.

(ccs)